

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Attorney Docket No.: 49974-035

Applicant(s): Michael Tesar et al.

Confirmation No.: 8662

Appl. No.: 10/588,568

Examiner: Unassigned

Filing Date: August 4, 2006

Art Unit: Unassigned

Title: ANTI-CD38 HUMAN ANTIBODIES AND USES THEREOF

**Declaration of Downetta Teagle-Tate in Support of Petition for  
Revival of Unintentionally Abandoned Application**

1. From October 8, 2007 to August 13, 2009 I was a Patent Assistant at Proskauer Rose LLP ("Proskauer") in Washington DC. As part of my responsibilities I monitored the progress of patent applications filed by Proskauer Rose at the United States Patent and Trademark Office ("PTO"). For any application where no communication was received from the PTO for a period of 12 or more months, my practice was to make a telephonic inquiry to the PTO regarding the status of the application, and/or submit a written status request.
2. Application Serial No. 10/588,568 ("the '568 application") was filed on August 4, 2006 as a national phase application under 35 USC §371. The application was filed by the law firm of Jones Day in Cleveland, and the application transmittal was signed by Stephen D. Scanlon, an attorney at Jones Day.
3. In a letter dated March 22, 2007, MorphoSys AG, the assignee of the captioned application, instructed Mr. Scanlon to transfer responsibility for the '568 application to Paul M. Booth, an attorney with Proskauer Rose LLP ("Proskauer").
4. On March 28, 2007, Mr. Scanlon filed a Request for Withdrawal as Attorney or Agent and Change of Correspondence Address in the '568 application. The Request stated that future correspondence should be mailed to Paul Booth at Proskauer in Washington DC. A copy of this Request was present in the file received from Mr.

Scanlon. The electronic copy of the Request in PAIR shows a USPTO date stamp for March 30, 2007.

5. Mr. Scanlon transferred the '568 application file to Proskauer on April 2, 2007. The file did not contain any correspondence received from the PTO other than a receipt postcard mailed August 4, 2006, which provided the application serial number. The file received from Mr. Scanlon did not contain a Notification of Missing Requirements, nor did Mr. Scanlon's March 29, 2007 cover letter that accompanied the file contain any mention that a Notification of Missing Requirements had been received in the application.

6. On February 4, 2008, Dr. Booth submitted a Status Inquiry to the PTO, requesting information regarding the status of the '568 application. The Status Inquiry stated that "[a]pplicants have not received an Official Filing Receipt or any other communication from the PTO. Please advise the undersigned attorney of record the status of this application." Neither Dr. Booth nor any other Proskauer representative received a response to this Status Inquiry.

7. On or about June 4, 2008, I called the PTO Office of PCT Legal Administration to inquire about the status of the '568 application. I talked to Ms. Wanda Banks, who directed me to call Mr. Winston Alvarado at the Office of PCT Operations.

8. On June 4, 2008 at around 11:00 A.M., I called Mr. Alvarado and left a message asking for the status of the application and inquiring why no information about the application was available on the PTO electronic Public PAIR and Private PAIR databases. Mr. Alvarado called back at around 12:00 P.M. and left a message stating that he would "look into" the status of the case and call me back. By August 13, 2008, neither I nor any other Proskauer representative had received any further communication from either Mr. Alvarado or a representative of the PTO's legal department.

9. On August 13, 2008, I again called the PTO and left a message for Mr. Alvarado regarding the February 4, 2008 Status Inquiry, and asked why no information about the application was available on the PAIR databases. When Mr. Alvarado returned my call,

he told me that he could not find any information about the application and that he was going to forward my inquiry to the PTO Office of PCT Legal Administration.

10. I did not receive any telephone or written communication from the PTO Office of PCT Legal Administration.

11. I prepared an Information Disclosure Statement for the captioned application that was submitted electronically on September 5, 2008, together with copies of 44 references. The electronic receipt shown in PAIR states that the correspondence address for the application is Mr. Scanlon's address at Jones Day in Cleveland, even though a request for change of correspondence address was filed by Mr. Scanlon in March 2007.

12. On December 11, 2008, Proskauer received a Decision signed by Bryan Lin, a PCT Legal Examiner in the PCT Legal Office, stating that Mr. Scanlon's request to withdraw as attorney, filed March 30, 2007, was moot, since the file did not contain a power of attorney from applicant to Mr. Scanlon. The Decision states that the "application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision," but does not contain any indication regarding the status of the application. This Decision was the first correspondence received by Proskauer Rose from the PTO regarding the '568 application.

13. On May 22, 2009, the USPTO issued a Notice of Abandonment stating that the '568 application was deemed abandoned for failure to respond to a "notification of MISSING REQUIREMENTS (Form PCT/DO/E0/905), mailed 02/27/2007." The Notice of Abandonment was signed by Mr. Alvarado, and was mailed to Paul Booth at Proskauer Rose.

14. I declare that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true. I acknowledge that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon.

Date:

10/14/09

Downetta Teagle-Tate  
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